Case No. D11/08

Salaries tax – deductions – whether 'necessary' or 'essential' to the production of assessable income – overseas recognised retirement scheme – sections 2(1), 12, 26G and 68(4) of the Inland Revenue Ordinance ('IRO') – section 4(3) of the Mandatory Provident Fund Schemes Ordinance.

Panel: Anthony So Chun Kung (chairman), Lee Fen Brenda and William Thomson.

Date of hearing: 12 March 2008.
Date of decision: 27 May 2008.

The taxpayer was employed as a Native-speaking English Teacher. She claimed that she should be granted deduction of expenses in respect of her laptop computer (Sum A). In her written submission, the taxpayer sought for '… depreciation (allowances) for the laptop (computer)'. She contended that she needed a computer as a lot of her work was done after school hours to search for information and materials. The employer school stated that desktop computers were available in the school for general usage of all members of the teaching staff.

The taxpayer also claimed that she should be granted deduction of expenses in respect of two contributions she paid to overseas pension scheme.

Held:

1. To deduct Sum A under section 12(1)(a) of the IRO, the taxpayer must show that she had no choice. As long as the taxpayer could perform her teaching without a laptop computer, she had a choice and the expense on a laptop computer could not be 'necessary' for the purpose of deduction.

2. According to section 12(1)(b) of the IRO, to deduct depreciation allowances in respect of capital expenditure on machinery or plant, a taxpayer must show that the use of such machinery or plant is 'essential to the production of the assessable income'. Section 12(1)(a) deals with deduction of revenue expense and section 12(1)(b) deals with depreciation allowances of capital expenditure. Both deal with tax deduction of outlays. It is difficult to reason why the test in allowing tax deduction for revenue expense should be different from capital expenditure. In this case, the fact that the taxpayer has a choice to use the desktop computers provided by the school instead of buying her own laptop computer remains unchanged whether she claim expenses deduction under 12(1)(a) or depreciation

allowances under section 12(1)(b). If the expense on her laptop computer could not be 'necessarily incurred in the production of the assessable income', depreciation allowance thereon likewise could not be 'essential to the production of the assessable income'.

3. According to section 26G of the IRO, contributions are deductible not because they are 'mandatory contributions to retirement schemes' or 'MPF contributions made outside Hong Kong'. Contributions are deductible only because they are paid into a 'recognised retirement scheme'. The taxpayer had not adduced proof showing that the two contributions she paid to the overseas pension scheme was a recognised retirement scheme under the IRO.

Appeal dismissed.

Cases referred to:

D76/90, IRBRD, vol 5, 515
D89/89, IRBRD, vol 6, 328
Commissioner of Inland Revenue v Yau Lai Man t/a L M Yau & Co [2005] 3 HKLRD 737
Medical Council of Hong Kong v Chow Siu Shek [2003] 3 HKCFAR 144

Taxpayer in absentia.
Tang Hing Kwan for the Commissioner of Inland Revenue.

Decision

The appeal

1. Mrs A ('the Taxpayer') objected to the salaries tax assessments for the years of assessment 2006/07 and 2007/08 raised on her. She claimed that she should be granted deductions of expenses in respect of her laptop computer (B1/20) which she bought on 20 January 2006 in the sum of HK$8,713.00 ('Sum A'), and in respect of two contributions she paid to Scheme B, first on 3 August 2006 covering the period from 27 April 2006 to 23 January 2007 in the sum of $3,543.20 [Country C currency] ('Sum B'), and second on 7 February 2007 covering the period from 24 January 2007 to 26 April 2007 in the sum of $1,062.96 [Country C currency] ('Sum C'). The Deputy Commissioner of Inland Revenue in his Determination confirmed disallowing the deductions of Sum A, Sum B and Sum C. The Taxpayer appealed to this Board.

The hearing

2. The Taxpayer returned to Country C and upon her application the Board directed the hearing of her appeal to be heard in absentia pursuant to section 68(2D) of the Inland Revenue Ordinance, Chapter 112 ('IRO').

3. The Board received the following bundles of documents before the hearing on Wednesday 12 March 2008:

(1) Board's bundle 'B1' dated 25 February 2008;
(2) Taxpayer's bundle 'A1' received on 27 February 2008;
(3) Revenue's bundle 'R1' received on 3 March 2008;
(4) Revenue's bundle 'R2' received on 3 March 2008;
(5) 'Submission by the Commissioner's Representative' received on 3 March 2008;
(6) Revenue's bundle 'R1-Part II' received on 7 March 2008;
(7) 'Supplementary Submission by the Commissioner's Representative' received on 7 March 2008;
(8) Taxpayer's bundle 'A2' received on 11 March 2008.

The facts

4. Upon scrutinizing the documents, we find the followings relevant facts of this case:

(1) By a letter of appointment dated 23 November 2005 [B1/16-19], the Taxpayer was employed by the Education and Manpower Bureau ['the Bureau'] as a Native-speaking English Teacher ['NET'] for the period from 3 January 2006 to 15 August 2007.

(2) The Taxpayer filed her Tax Returns for the years of assessment 2006/07 [R1/1-4] and 2007/08 [R1/5-8] and the assessor accordingly raised salaries tax assessments for the years of assessment 2006/07 [R1/9-10] and 2007/08 [R1/11-12]. The Taxpayer objected [R1/13, 14, 16] and claimed deductions amongst others, for expenses incurred in the purchase of a laptop computer and in the contributions made to Scheme B.

(3) In pursuing her claim for deduction of the purchase cost of the laptop computer, the Taxpayer contended that [R1/21]:

'Besides teaching, my role includes resources / materials development and school-based professional development. In order to do the job, I need a

computer as a lot of the work is done after school hours to search for information and materials. …

… I bought the computer solely for work purposes. I need not have incurred this sum of money if I had not been working as a [NET] in Hong Kong.'

(4) In reply to the assessor's enquiries, the Bureau provided the following information [R1/32]:

…

(b) 'Desktop computers are available in the school for general usage of all members of the teaching staff. Computers are installed in the Staff Room, Reading Room and Computer Assistant Learning Rooms. Laptop computers are purchased at the teachers' own expense.'

(c) '[The Taxpayer] is exempted from joining the MPF scheme because she has joined an overseas pension scheme.'

(5) In support of her claim for deduction of the contributions to retirement scheme, the Taxpayer provided copies of the following documents:

(a) Declaration on exemption under the Mandatory Provident Fund Scheme Ordinance (Chapter 485) dated 7 February 2007 [B1/21];

(b) a letter dated 24 January 2007 issued by Scheme B in respect of the Taxpayer's choice of making a lump sum of $1,062.96 [Country C currency] for the period from 27 April 2007 to 31 August 2007 [B1/22]; and

(c) a letter dated 17 December 2007 issued by Scheme B [B1/3, 39] stating, that Scheme B administered the Lump Sum Scheme, which is a superannuation fund in Country C and the Taxpayer being a member thereof had paid the following contributions to Scheme B:

		Date of payment	Amount	
(a)	Sum B	3 August 2006	$3,543.20 [Country C currency]	[B1/3]
(b)	Sum C	7 February 2007	$1,062.96 [Country C currency]	[B1/3]

Both Sum B and Sum C were paid in the year of assessment 2006/07.

(6) There are no records that the Lump Sum Scheme administered by Scheme B was a retirement scheme approved by the Commissioner under the repealed section 87A of the IRO. [R1/38-39]

(7) According to the Mandatory Provident Fund Schemes Authority ['the Authority'] [R1/37-37.2, R1(Part II)/53]

(a) the Authority did not have the records of the Lump Sum Scheme registered under section 18 of the Occupational Retirement Schemes Ordinance, Chapter 426 ['the ORSO'];

(b) the Authority did not have the records that an exemption certificate had been issued under section 7 of the ORSO in respect of the Lump Sum Scheme;

(c) the Lump Sum Scheme was not an approved mandatory provident fund scheme under Mandatory Provident Fund Schemes Ordinance, Chapter 485 ['the MPFSO'].

The law

5. We find the following provisions of the IRO relevant:

Section 12:

'*(1) In ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person –*

(a) all outgoings and expenses, other than expenses of a domestic or private nature and capital expenditure, wholly, exclusively and necessarily incurred in the production of the assessable income;

(b) allowances calculated in accordance with Part VI in respect of capital expenditure on machinery or plant the use of which is essential to the production of the assessable income;……

(2) Where any machinery or plant is not used wholly and exclusively in the production of assessable income, the amount of the allowances provided for in subsection (1)(b) shall be reduced in the proportion considered by the assessor to be fair and reasonable.

Section 26G:

> '*(1) Subject to the other provisions of this section, where a person pays any contributions to a recognized retirement scheme during any year of assessment, a deduction in respect of the contributions shall be allowable to that person for that year of assessment.*
>
> *(2) A deduction shall not be allowable to a person under subsection (1) for any year of assessment-*
>
> *(a) in respect of any sum which is allowable as a deduction under Part IV;*
>
> *(b) in excess of the amount specified in Schedule 3B in relation to that year of assessment.*
>
> *(3) Subject to subsection (2), the amount of the deduction allowable under this section in respect of any contributions to a recognized retirement scheme, in relation to a person, shall be-*
>
> *(a) in the case of a recognized occupational retirement scheme-*
>
> *(i) the amount of the contributions paid by the person as an employee to the scheme; or*
>
> *(ii) the amount of the mandatory contributions that the person would have been required to pay as an employee if at all times whilst an employee during the year of assessment in question he had contributed as a participant in a mandatory provident fund scheme,*
>
> *whichever is of the lesser amount;*
>
> *(b) in the case of a mandatory provident fund scheme, the amount of the mandatory contributions paid by the person as an employee.'*

Section 2(1) of the IRO defines 'recognized retirement scheme', 'recognized occupational retirement schemes' and 'mandatory provident fund scheme' as:

> ' *"recognized retirement scheme" …… means-*

(a) a recognized occupational retirement scheme; or

(b) a mandatory provident fund scheme'

' "recognized occupational retirement scheme" …… means an occupational retirement scheme-

(a) which, prior to the commencement of section 2 of the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993), was a retirement scheme approved by the Commissioner under section 87A where such approval has not subsequently been withdrawn;*

(b) registered for the time being under section 18 of the Occupational Retirement Schemes Ordinance (Cap 426);

(c) in respect of which an exemption certificate has been issued under section 7(1) of the Occupational Retirement Schemes Ordinance (Cap 426) and has not been withdrawn;

(d) which is operated by an employer who is-

(i) the government of a country or territory outside Hong Kong; or

(ii) any agency or undertaking of or by such a government which is not operated for the purpose of gain; or

(e) contained in or otherwise established by an Ordinance other than the Mandatory Provident Fund Schemes Ordinance (Cap. 485)'

' *"mandatory provident fund scheme" …… means a provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485)'*

Section 68(4):

' *The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.'*

Sum A in the purchase of a laptop computer

6. The Taxpayer submitted that Sum A was necessarily incurred [R1/13]. She said that her teaching duties included searching for information and materials which were mostly done after

school hours [R1/13]. Out of all the computers in her work area, only one was installed in English and very often she could not access that computer because some other teacher was using it. She submitted that she had no choice but to buy her own computer to enable her to perform her duties as a NET [B1/25; A1/2]. She therefore claimed that Sum A so incurred should be tax deductible.

7. The Taxpayer produced several articles written for the school magazines to illustrate the extent of professional commitment she had in carrying out her teaching duties as a NET [A1, Appendix A1-A2].

8. We have no doubt that the Taxpayer is a dedicated NET and she bought the computer for use connected with her teaching duties. But this does not mean Sum A is then deductible to tax.

Section 12(1)(a) of the IRO

9. To be deductible, an expense must satisfy section 12(1)(a) of the IRO which provides that such an expense must be (1) 'wholly, exclusively and necessarily incurred in the production of the assessable income' and (2) it was not an expense of domestic or private nature and capital expenditure.

10. Wordings of section 12(1)(a) of the IRO are strict. The Board in D76/90, IRBRD, vol 5, 515 said:

> '*There are many leading cases which make it clear that the deductions permitted for salaries tax purposes are very limited. ... The words "wholly", "exclusively" and "necessarily" each stand alone and must be given their full meaning. They are not one expression. Before an expense can be deducted, it must comply with all three tests. The word "wholly" means that if an expense is incurred partly for the production of the assessable income but partly for the benefit of the Taxpayer or any other person, the expense is not deductible. It does not matter if the principal object of the expense or the majority of the expense is attributable to the employment. It must be "wholly" attributable to the employment.*
>
> *The word "necessarily" has also been given a very precise interpretation. The expenses must be necessarily incurred in the production of the assessable income. This means that this test has two limbs. The expense must be something which the employee must incur and has no choice.* ***If there is any choice, then it is not necessarily incurred.*** *Secondly, it must be necessarily incurred in the production of the assessable income. This means that it is not sufficient for the employment contract or employer to impose a condition upon*

> *the employee if the expense is not incurred in the production of the assessable income.*
>
> *It should also be noted that section 12(1)(a) of the Inland Revenue Ordinance refers specifically to outgoings and expenses incurred "in the production of the assessable income". There is a subtle but important distinction between these words and, for example, the words "for the purpose of producing the assessable income."'* (emphasis added)

11. We agree with the decision of the Board in D76/90. To deduct Sum A under section 12(1)(a) of the IRO, the Taxpayer must show that she had no choice. She must show that if without the laptop computer, she could not perform her teaching duties. In this respect, the Taxpayer fails. She fails to challenge the fact that desktop computers were made available in the school for use by all teaching staffs in the Staff Room, Reading Room and Computer Assistant Learning Rooms (fact 4(4b) above). No matter how inconvenient it might be if without a laptop computer, the Taxpayer could still perform her teaching duties using the desktop computers provided in the school. Showing how instrumental a laptop computer has contributed to her performing her teaching duties is not good enough. As long as the Taxpayer could perform her teaching duties without a laptop computer, she had a choice and the expense on a laptop computer could not be 'necessary' for the purpose of deduction.

12. Further, the laptop computer was an asset with a life span beyond one assessment year. It was used by the Taxpayer since purchase on 20 January 2006 and subsequently brought back to Country C at the end of her contract [R1/27]. The Revenue was correct in its submission that Sum A was the acquisition cost of an asset and accordingly was a capital expenditure not deductible under section 12(1)(a) of the IRO.

Section 12(1)(b) of the IRO

13. In her written submission dated 11 March 2008 [A2/1] the Taxpayer sought for '…depreciation (allowances) for the laptop (computer) for the years of assessment 2006/07 and 2007/08…'

14. According to section 12(1)(b) of the IRO, to deduct depreciation allowances in respect of capital expenditure on machinery or plant, a taxpayer must show that the use of such machinery or plant is 'essential to the production of the assessable income'. To seek for depreciation allowances, therefore, the Taxpayer must show that the use of her laptop computer is 'essential to the production of the assessable income'.

15. The Taxpayer has not in her submission dated 11 March 2008 explained why she believes Sum A is 'essential to the production of the assessable income'. Presumably, the Taxpayer falls back on her earlier argument for deduction under section 12(1)(a) on the ground that

Sum A was 'necessarily incurred' (see paragraph 6 above).

16. There is no doubt a close resemblance exists between the wordings 'essential to the production of the assessable income' in section 12(1)(b) to the wordings 'necessarily incurred in the production of the assessable income' in section 12(1)(a) of the IRO.

17. The Board in D89/89, IRBRD, vol 6, 328 said:

> *'These allowances are claimed under section 12(1)(b) which applies to allowances 'in respect of capital expenditure on machinery or plant the use of which is essential to the production of the assessable income'. No authority was cited on the meaning of the words 'the use of which is essential to the production of income', but it was submitted on behalf of the Revenue that the United Kingdom authorities on the words 'necessarily' and 'in the performance of the duties of the office or employment' in paragraph 7 of schedule 9 to the Income Tax Act 1952 should apply. This involves treating the words in question as being equivalent to the words 'necessarily used in the performance of the duties of the office or employment' or words of a similar import. This approach has the merit of bringing paragraph (b) in line with paragraph (a), thereby maintaining consistency between the two. For the purposes of this appeal we will apply the United Kingdom authorities.'*

18. According to the Board in D89/89, the word 'essential' in section 12(1)(b) is treated as being equivalent to the word 'necessarily' in section 12(1)(a) of the IRO. The test for allowing expense under section 12(1)(a) would therefore be similar to allowing depreciation under section 12(1)(b) of the IRO.

19. We agree with the above reasoning of the Board in D89/89. Section 12(1)(a) deals with deduction of revenue expense and section 12(1)(b) deals with depreciation allowances of capital expenditure. Both deal with tax deduction of outlays. It is difficult to reason why the test in allowing tax deduction for revenue expense should be different from capital expenditure.

20. In this case, the fact that the Taxpayer has a choice to use the desktop computers provided by the school instead of buying her own laptop computer remains unchanged whether she claim expense deduction under section 12(1)(a) or depreciation allowances under section 12(1)(b). If the expense on her laptop computer could not be 'necessarily incurred in the production of the assessable income', depreciation allowance thereon likewise could not be 'essential to the production of the assessable income'. In both regards, the Taxpayer would not be entitled to claim tax deduction on her laptop computer.

Sum B & Sum C in the contributions to Scheme B

21. The Taxpayer was a member of the Lump Sum Scheme which is a government superannuation fund operated by Scheme B in Country C [R1/25 & 33, A1/2].

22. Section 4(3)(b) of the Mandatory Provident Fund Schemes Ordinance Chapter 485 ('MPFSO') provides:

> '*4(3)…any person entering Hong Kong for the purpose of being employed or self-employed-*
>
> ….
>
> *(b) who is a member of a provident, retirement or superannuation scheme (however described) of a place outside Hong Kong, shall be exempt from the provisions of this Ordinance.'*

23. As a member of a superannuation fund outside Hong Kong, the Taxpayer was exempt from MPFSO [B1/21]. Instead of making contributions to a MPF scheme in Hong Kong pursuant to MPFSO, the Taxpayer made contributions to Scheme B outside Hong Kong. To the Taxpayer, Sum B and Sum C were in her words 'mandatory contributions to retirement schemes' [R1/13, 21] or 'her MPF contributions made outside Hong Kong' [A2/2] and she claimed tax deduction thereof.

24. According to the IRO under section 26G, however, contributions are deductible not because they are 'mandatory contributions to retirement schemes' or 'MPF contributions made outside Hong Kong'. Contributions are deductible only because they are paid into a 'recognized retirement scheme'.

25. 'Recognized retirement scheme' is defined in section 2(1) of the IRO. To claim deduction, the Taxpayer must show that the Lump Sum Scheme of Scheme B to which she made contributions was a recognized retirement scheme as defined by section 2(1) of the IRO. After all, it is the Taxpayer who bears the burden of proof (section 68(4) of the IRO). Unfortunately, the Taxpayer had not adduced proof showing that the Lump Sum Scheme of Scheme B was a recognized retirement scheme under the IRO.

26. The Revenue, on the other hand, produced search reports respectively issued by the Retirement Schemes Section of the IRD [R1/38-39, fact 4(6)] and the Authority [R1/37-37.2, R1(Part II)/53, fact 4(7)] and argued that the Lump Sum Scheme of Scheme B to which the Taxpayer made contributions did not meet the definition of a 'recognized retirement scheme' ('RRS') in section 2(1) of the IRO.

27. According to section 2(1) of the IRO, a 'recognized retirement scheme' means (1) a 'recognized occupational retirement scheme' ('RORS') or (2) a 'mandatory provident fund

scheme' ('MPFS').

28. 'MPFS' is defined to mean a scheme registered under the MPFSO. The report of the Authority [R1/37-37.2, R1(Part II)/53, fact (7)] however confirmed that the Lump Sum Scheme of Scheme B was not an approved MPFS under the MPFSO. The Revenue therefore submitted that the Lump Sum Scheme of Scheme B was not a MPFS for the purpose of deduction of contributions. In the absence of other evidence to the contrary, we accept the Revenue's submission.

29. 'RORS' on the other hand is defined to mean an occupation retirement scheme which must be either one of five categories, (a) – (e); for easy reference, relevant definition is repeated below:

> '*2(1) "recognized occupational retirement scheme" …… means an occupational retirement scheme-*
>
> *(a) which, prior to the commencement* of section 2 of the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993), was a retirement scheme approved by the Commissioner under section 87A where such approval has not subsequently been withdrawn;*
>
> *(b) registered for the time being under section 18 of the Occupational Retirement Schemes Ordinance (Cap 426);*
>
> *(c) in respect of which an exemption certificate has been issued under section 7(1) of the Occupational Retirement Schemes Ordinance (Cap 426) and has not been withdrawn;*
>
> *(d) which is operated by an employer who is-*
>
> *(i) the government of a country or territory outside Hong Kong; or*
>
> *(ii) any agency or undertaking of or by such a government which is not operated for the purpose of gain; or*
>
> *(e) contained in or otherwise established by an Ordinance other than the Mandatory Provident Fund Schemes Ordinance (Cap. 485)'*

Category (a)

30. Category (a) is defined as a retirement scheme approved by the Commissioner under

the repealed section 87A of the IRO. The report of the Retirement Schemes Section of the IRD [R1/38-39, fact 4(6)] confirmed that there were no records that the Lump Sum Scheme of Scheme B was approved by the Commissioner under repealed section 87A of the IRO. The Revenue submitted that the Lump Sum Scheme of Scheme B was not a category (a) RORS. In light of available evidence, we agree with the Revenue.

Category (b) & (c)

31. Category (b) is defined to mean a retirement scheme registered under section 18 of the Occupational Retirement Schemes Ordinance, Chapter 426 ('ORSO') and category (c) is defined as a retirement scheme in respect of which an exemption certificate has been issued under section 7(1) of the ORSO. The Authority [R1/37-37.2, R1(Part II)/53, fact 4(7)] reported that there was no record of the Lump Sum Scheme of Scheme B registered under section 18 of the ORSO and no exemption certificate had been issued to the Lump Sum Scheme of Scheme B under section 7 of the ORSO. The Revenue therefore submitted that the Lump Sum Scheme of Scheme B was not a category (b) or category (c) RORS. In light of the Authority's report, we accept the Revenue's submission.

Category (d)

32. Category (d) is defined as a retirement scheme 'which is operated by an employer who is (i) the government of a country or territory outside Hong Kong; or (ii) any agency or undertaking of or by such a government which is not operated for the purpose of gain.'

33. The wordings of category (d) are restricted to schemes operated by 'an employer' who is an offshore government or agency. Proving the scheme is operated by an offshore government or agency is not enough, it must also be shown that such offshore government or agency is 'an employer'.

34. 'An employer' of whom? The IRO offers no definition.

35. The Revenue cited Commissioner of Inland Revenue v Yau Lai Man t/a L M Yau & Co [2005] 3 HKLRD 737 *[R2 – pages 202 to 222]*, where Hon Yam J quoted the following decision in Medical Council of Hong Kong v Chow Siu Shek [2003] 3 HKCFAR 144 *[R2 – page 209]*:

> *'…. When the true position under a statute is to be ascertained by interpretation, it is necessary to read all of the relevant provisions together and in the context of the whole statute as a purposive unity in its appropriate legal and social setting. Furthermore it is necessary to identify the interpretative considerations involved and then, if they conflict, to weigh and balance them.' (per Bokhary PJ)*

36. The Revenue submitted that all of the relevant provisions of the IRO, sections 8, 9, 12 and 26G, together ascertain the chargeable income of a taxpayer, accordingly, 'an employer' as referred to in category (d) 'should mean the employer of the taxpayer from whom the taxpayer received income which is chargeable to Salaries Tax' (paragraph 7.34 of the submission of the Commissioner's Representative).

37. We accept the Revenue's submission.

38. Category (d) provides for deduction of contributions made by a taxpayer. Such deduction goes to reduce the chargeable income and salaries tax of such a taxpayer. For the purpose and in the context of deduction against a taxpayer's income and salaries tax, it is only reasonable to interpret category (d) as meaning a retirement scheme operated by 'an employer' of such a taxpayer from whom such taxpayer received his/her income.

39. The retirement scheme in this case, the Lump Sum Scheme of Scheme B, was operated by an offshore government or agency. Such an offshore government or agency however was not the employer of the Taxpayer. The Taxpayer was employed by the Hong Kong Government. In the premise, the Lump Sum Scheme of Scheme B was not a category (d) RORS.

Category (e)

40. Category (e) is defined to mean 'an occupational retirement scheme contained in or otherwise established by an Ordinance other than the MPFSO'.

41. The word 'Ordinance' is defined in section 3 of the Interpretation and General Clauses Ordinance Chapter 1 to mean:

> '*(a) any Ordinance enacted by the Legislative Council;*
>
> *(b) any Ordinance adopted by virtue of Article 160 of the Basic Law as a law of the Hong Kong Special Administrative Region;*
>
> *(c) any subsidiary legislation made under any such Ordinance except any such subsidiary legislation which has pursuant to Article 160 of the Basic Law been declared to be in contravention of the Basic Law; and*
>
> *(d) any provision or provisions of any such Ordinance or subsidiary legislation; (Added 26 of 1998 s. 4)'*

42. The Lump Sum Scheme of Scheme B was a Country C scheme. There is no evidence that such a scheme was contained in or established by any Ordinance in Hong Kong. We

therefore agree with the Revenue and find that the Lump Sum Scheme of Scheme B was not a category (e) RORS.

43. Summarizing from the above analysis (paragraphs 21 to 42 above), the Lump Sum Scheme of Scheme B was not a RRS according to section 2(1) of the IRO, accordingly, Sum B and Sum C contributed thereto were not deductible.

Scheme operated by the Hong Kong Government?

44. Finally, we wish to say a few words on what the Taxpayer has said at the end of her written submission dated 11 March 2008 [A2/2]:

> ' In June 2007, I met with an IRD assessment officer in the IRD office to get help with filling in the tax return. I was not told then that deductions would not be allowed if the retirement scheme is not operated by the Hong Kong Government. In fact, I was told that although difficult, a non-local tax-payer was able to claim for deductions for his/her MPF contribution made outside Hong Kong. I remember the country cited was Singapore. If indeed contributions can only be deducted if operated by the Hong Kong Government only, then I should have been advised accordingly.' [A2/2]

45. Her above passage was made in response to the written submission of the Commissioner's Representative filed herein on 3 March 2008. In her above passage, the Taxpayer seemed to believe her contributions made to the Lump Sum Scheme of Scheme B was not deductible because the Lump Sum Scheme of Scheme B was not operated by the Hong Kong Government. In this respect, she had erred.

46. Section 26G of the IRO does not require a RRS to be operated by the Hong Kong Government before contributions are deductible. In fact, all existing RRSs in Hong Kong are not being operated by the Hong Kong Government. Section 26G of the IRO only requires that the retirement scheme concerned is a RORS or MPFS as defined in section 2(1) of the IRO.

47. The Taxpayer should find for herself a 'recognized retirement scheme' pursuant to sections 26G and 2(1) of the IRO if she wished to claim deductions of contributions. She obviously had not done so.

48. According to record, she made Sum B and Sum C contributions respectively on 3 August 2006 and 2 February 2007 and 'Declaration on Exemption under the MPFSO' on 7 February 2007. By her own admission, she sought help from the IRD assessment officer only in June 2007. The Taxpayer could not have made Sum B and Sum C contributions in reliance of any statements of the IRD assessment officer.

49. Whatever the IRD assessment officer told her in June 2007, she had already made

her choice and contributed Sum B and Sum C to Scheme B. At the time of payment of Sum B and Sum C, she had not sought advice (in the least not from the IRD assessment officer) of the requirement of the IRO under section 26G and section 2(1).

50. It is a personal duty of a taxpayer to organize his/her own tax affairs properly and for such purposes to enlist such assistance and advice as he/she deems appropriate. For whatever reason if she should fail to do so, she has only herself to blame.

Conclusion

51. Section 68(4) of the IRO provides that:

> '*The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.*'

For reasons stated above, we find that the Taxpayer has failed to discharge her onus.

52. In the result, we dismiss the Taxpayer's appeal.